

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**D'MONTERRIO GIBSON**

**PLAINTIFF**

**V.**

**CIVIL ACTION NO.: 3:23-cv-54-DPJ-FKB**

**FEDERAL EXPRESS CORPORATION, CITY OF  
BROOKHAVEN, MISSISSIPPI, CHIEF KENNY  
COLLINS, IN HIS INDIVIDUAL AND OFFICIAL  
CAPACITY, BRANDON CASE, AND GREGORY CASE**

**DEFENDANTS**

---

**PLAINTIFF'S RESPONSE IN OPPOSITION TO  
DEFENDANT FEDERAL EXPRESS CORPORATION'S  
MOTION TO DISMISS**

---

**COMES NOW** D'Monterrio Gibson ("Plaintiff") by and through his counsel of record, and files this *Response in Opposition to Defendant Federal Express Corporation's Motion to Dismiss*. Plaintiff moves this Honorable Court to deny Defendant Federal Express Corporation's ("Defendant FedEx") motion and requests a hearing on said motion and as grounds, therefore, would state as follows:

**RESPONSE**

1. This case arises due to Defendant FedEx and others' violation of Plaintiff's state and federal rights.
2. On January 24, 2022, Plaintiff, an African American male, was acting within the scope of his employment with Defendant FedEx when he was civilly assaulted and battered by Brandon Case ("Defendant Brandon") and Gregory Case ("Defendant Gregory")<sup>1</sup>, two Caucasian males.

---

<sup>1</sup> Defendant Brandon and Defendant Gregory are collectively referred to as "Defendants Case".

3. Defendants Case terrorized, shot towards, and chased Plaintiff out of the Junior Trail neighborhood located in Brookhaven, Mississippi.
4. Defendant FedEx sent Plaintiff back to work on the same dangerous route the following day intentionally discriminating against Plaintiff because of his race and intentionally inflicting emotional distress.
5. This unconscionable conduct violated both federal and state law. Justice for these acts is sought by Plaintiff thus on January 20, 2023, Plaintiff filed suit against Defendant FedEx and others asserting (1) 42 U.S.C. Section 1981 - Intentional Racial Discrimination; (2) civil assault and battery; (3) negligent/intentional infliction of emotional distress; (4) general/gross negligence; and (5) civil obstruction of justice.
6. On March 23, 2023, Defendant FedEx filed a *Motion to Dismiss*.
7. In deciding a Federal Rule of Civil Procedure 12(b)(6) motion, the Court must “accept all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205-206 (5th Cir. 2007). To state a claim upon which relief may be granted, Plaintiff must plead “enough facts to state a claim to relief that is plausible on its face,” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), and must plead those facts with enough specificity “to raise a right to relief above the speculative level.” *Id.* at 555. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
8. As (1) Plaintiff’s claim of intentional infliction of emotional distress is supported by the asserted facts and not precluded by the Mississippi Workers’ Compensation Act; (2)

Plaintiff's 42 U.S.C. Section 1981 claim meets the "plausibility pleading standard"; and  
(3) Plaintiff's claims should not be dismissed until Plaintiff is afforded an opportunity  
to amend his complaint, Defendant FedEx's motion to dismiss should be denied.

**WHEREFORE, PREMISES CONSIDERED** Plaintiff prays that this Honorable Court  
will deny Defendant FedEx's motion to dismiss. Plaintiff also prays for all other general relief  
this Court deems to be fair and just.

Respectfully submitted, this the 17<sup>th</sup> day of April 2023.

**D'MONTERRIO GIBSON**

/s/ Carlos Moore  
CARLOS MOORE, MSB #100685

**OF COUNSEL:  
THE COCHRAN FIRM  
306 Branscome Drive  
Grenada, Mississippi 38901  
Telephone: 662-227-9940  
Fax: 662-227-9941  
cmoore@cochranfirm.com**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing pleading was transmitted  
via ECF to all counsel of record.

**This the 17<sup>th</sup> day of April 2023.**

/s/ Carlos Moore  
Carlos Moore, MSB #100685